Nos. 88-699 and 88-820

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,
Petitioner,

v.

JESSIE BERGER, RANDOLPH JACKSON, TOMMY KIRKLAND, VAN EDWARD LEWIS, RONALD TUCKER, ERNEST BELLAMY, GARRETT SIMMONS AND WILLIE LEE MCMILLIAN,
Respondents.

IRON WORKERS REINFORCED RODMEN, LOCAL 201,
Petitioner,

v.

JESSIE BERGER, *et al.*,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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December 17, 1988

QUESTIONS PRESENTED

1. Did statistical evidence presented on behalf of a class of experienced black rodmen, which identified, as the cause of a statistically significant disparity between the proportion of experienced black and white rodmen who became union members, the requirement that experienced blacks undertake classroom training before being permitted to take an exam for union membership, establish a *prima facie* case of racial discrimination under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 1981, as the courts below ruled?

2. Did the court of appeals correctly hold that defendant unions, which at trial did not argue, or offer any evidence, that their membership practices are based on legitimate business reasons or are justified by business necessity, failed to rebut plaintiffs' *prima facie* case of racial discrimination?

3. Did the court of appeals correctly affirm the district court's ruling that the International Union was liable for racial discrimination when the facts showed that the International Union actively participated in and approved of the discriminatory membership practices implemented by its affiliate, Local 201?

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RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Jessie Berger *et al.*, respectfully request that this Court deny the petitions for writs of certiorari filed by the International Association of Bridge, Structural and Ornamental Iron Workers ("the International") and its affiliated local union, Iron Workers Reinforced Rodmen, Local 201 ("Local 201").[1] The petitions seek review of the decision of the United States Court of Appeals for the District of Columbia Circuit, reported at 843 F.2d 1395, *modified in part on reh'g*, 852 F.2d 619 (D.C. Cir. 1988), which held Local 201 and the International liable for racial discrimination against a class of black rodmen.

[1] By Order dated November 16, the Court granted respondents leave to file their opposition to the petition of the International, which was served on October 26, at the same time they file their opposition to Local 201's petition, served pursuant to an extension on November 17.

STATEMENT OF THE CASE

This case involves the efforts of a class of experienced black rodmen to gain membership in Local 201 and the International. Plaintiffs contended below that defendants' use of classroom training as a prerequisite to being permitted to take a test for union membership denied or delayed membership for qualified black workers. The district court found that defendants had violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, and 42 U.S.C. §1981 by this practice. After a "meticulous review" of the record (Pet. App. 4a), the court of appeals affirmed the district court's ruling in a detailed *per curiam* opinion (Edwards, D.H. Ginsburg and Starr, JJ.). Pet. App. 1a-87a.

At trial, plaintiffs presented a "straightforward" (Pet. App. 18a) statistical case in support of their claim of racial discrimination. As the district court found, the defendant unions required experienced black rodmen to complete one of two classroom programs (either the Apprenticeship Program for those 30 and under or the Training Program for others) as a prerequisite to taking the test for union membership, which no experienced worker failed. This prerequisite created unnecessary barriers to union membership that disproportionately disadvantaged experienced black rodmen, some of whom had worked more than 10,000 hours in the trade. *See* Pet. App. 17a-18a; Pet. App. 95a-96a, 97a-98a, 101a-102a (Trial Findings 12, 14, 17).

The court of appeals agreed that plaintiffs had demonstrated that the percentage of eligible blacks who became union members (*i.e.*, took and passed the journeyman exam) was lower than the percentage of eligible whites by a statistically significant margin, and thus that the challenged practice had a disparate impact in violation of Title VII. Indeed, the disparity resulting from the challenged practice was so great that the district court found, and the court of appeals affirmed, that defendants also had engaged in disparate treatment in violation of Title VII and had intentionally discriminated against the class in violation of section 1981. Pet. App. 18a-40a, 87a.

Defendants challenged the validity of a number of aspects of plaintiffs' statistical case. The court of appeals rejected those challenges. Pet. App. 27a-40a. The court of appeals, in particular, rejected defendants' claim that plaintiffs had failed to identify the specific practice that was discriminatory:

> Quite simply, defendants once again decline to recognize the thrust of plaintiffs' challenge. The "specific procedure" under challenge is the requirement of classroom training before experienced workers may qualify to enter the ranks of journeymen rodmen. That theory of the case fully satisfies defendants' obvious right to know precisely what is under challenge.

Pet. App. 34a. The court of appeals likewise ruled, contrary to defendants' assertion, that plaintiffs had established a causal connection between the challenged practice and the discriminatory result. Pet. App. 35a-36a.

Defendants made no response to plaintiffs' statistical case apart from the asserted inadequacies which the district court and the court of appeals rejected. The court of appeals observed that "[i]n the typical case, defendants' rebuttal case will likely focus on (1) inadequacies in the plaintiffs' statistical case, or (2) an alternative, more favorable statistical case, or (3) a nondiscriminatory explanation for the statistical disparities." Pet. App. 22a. Defendants, however, did not offer evidence of more favorable statistics. Nor did they offer evidence of a nondiscriminatory explanation for the racial disparities the district court found. *See* Pet. App. 150a-151a (Conclusions of Law 16, 18, 19). Thus, the court of appeals concluded that "[t]he record is, indeed, devoid of *any* affirmative rebuttal case" (Pet. App. 40a, emphasis in original) and affirmed the district court's findings of racial discrimination.

Applying traditional principles of agency law, the court of appeals upheld the district court's conclusion that the International was liable under Title VII because of its active participation in and approval of Local 201's membership procedures. Pet. App. 51a-63a. In addition, the court of appeals affirmed the ruling that the International was liable under section 1981. It held: "[t]his question need not detain us long . . . because . . . [t]he International's support of and participation in the very practices to which the plaintiffs' statistics apply is a sufficient basis from which the intent to discriminate on the part of the International may properly be inferred." Pet. App. 63a.

REASONS FOR DENYING THE PETITIONS

The court of appeals correctly applied established principles regarding proof of racial discrimination and common law agency in affirming the findings of the district court that defendants, "by adopting and implementing the requirement that applicants for union membership complete a Union-supervised educational program, discriminated against the properly certified classes of black plaintiffs in violation of Title VII and Section 1981." Pet. App. 87a. The decision below raises no issue worthy of review.

Local 201 tries in its petition to tie this case to the Court's decision in *Watson* v. *Fort Worth Bank & Trust*, 108 S. Ct. 2777 (1988), and the issues presented in *Wards Cove Packing Co.* v. *Atonio*, 827 F.2d 439 (9th Cir. 1987), *cert. granted*, 108 S. Ct. 2896 (1988) (No. 87-1387). However, nothing in *Watson* warrants further review of the instant case. Nor is there any connection between this case and *Wards Cove* that justifies Local 201's request that the Court defer action on, or grant, its petition. Similarly, the decision below does not conflict with the Court's decision in *Carbon Fuel Co.* v. *UMWA*, 444 U.S. 212 (1979), or national labor policy, as the International contends.

The court of appeals' ruling is nothing more than a routine, yet painstaking review of factual determinations of a trial court. Moreover, the decision of the court of appeals is correct. First, plaintiffs proved that a specific employment practice—the classroom training prerequisite—caused a disparity between experienced blacks and whites who sought union membership. Second, defendants failed to rebut plaintiffs' statistical case, either by offering their own statistical model showing an absence of disparate impact or by producing evidence of business justification or necessity. *Third*, plaintiffs proved, pursuant to established standards, that defendant International was aware of, and participated in, the discriminatory practices.

ARGUMENT

I. Neither *Watson* Nor *Wards Cove* Has Any Bearing On The Decision Below That Petitioners Violated Title VII And Section 1981.

Plaintiffs presented a straightforward disparate impact analysis under *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971). Specifically, as the court of appeals observed, plaintiffs proved statistically that, during the three-year period prior to suit, the classroom training barrier interposed by Local 201 and the International between experienced black rodmen and the journeyman exam disproportionately kept those black rodmen from taking that exam and thus obtaining admission to the union.[2] The court of appeals likewise held that plaintiffs' "evidence relating to Union admissions going back to 1967 . . . showed a statistically significant disparity between the proportion of eligible blacks and whites who became union members." Pet. App. 26a.

Local 201 seeks this Court's review by attempting to link the instant case to *Watson* v. *Fort Worth Bank & Trust*, 108 S. Ct. 2777 (1988), and *Wards Cove Packing Co.* v. *Atonio*, 827 F.2d 439 (9th Cir. 1987), *cert. granted*, 108 S. Ct. 2896 (1988). But none of the issues in those cases has any effect on the unanimous opinion of the court of appeals in this case. No purpose would be served either by granting Local 201's petition or deferring decision on it pending resolution of *Wards Cove*.

A. Local 201 first presents the recycled argument that plaintiffs' showing of causation between defendants' practices and the discriminatory impact was deficient. Local Pet. 9-13.[3] However, the court of appeals ruled that plaintiffs' *prima facie* case had focused on a specific employment practice: "[t]he 'specific procedure' under challenge is the requirement of classroom training

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[2] The court of appeals affirmed that the disparity was statistically significant (Pet. App. 19a-20a, 26a & n. 16), a determination which petitioners do not dispute.

[3] The court of appeals twice rejected the centerpiece of Local 201's petition—that plaintiffs made an insufficient showing of causation. *See* Pet. App. 29a-30a, 34a-36a; Pet. App. 89a. Local 201 argues that the decision in *Watson* and the grant of the petition in *Wards Cove* occurred after the court of appeals' principal decision in this case. Local Pet. 9-10. However, both decisions were issued one month before the court of appeals ruled on Local 201's petition for rehearing.

before experienced workers may qualify to enter the ranks of journeymen rodmen." Pet. App. 34a. Moreover, the court of appeals expressly rejected the argument Local 201 is making here—that plaintiffs had failed to show "a causal connection between the challenged practice and the alleged discriminatory result." Pet. App. 35a. Plaintiffs proved their case, as *Watson* contemplates (108 S. Ct. at 2788), by "identifying a 'specific employment practice"—the classroom training prerequisite for experienced applicants—and by showing that this practice caused the disparate impact. Pet. App. 34a-36a.

B. No other aspect of *Watson* requires further consideration of the decision below. This case does not involve promotions based on subjective criteria, as did *Watson*, but rather union admission procedures using objective, standardized criteria: a classroom training requirement for all union membership applicants, regardless of experience, as a prerequisite to taking the journeyman exam.[4] The court of appeals' opinion is a proper application of *Griggs* and is well within the framework of *Watson*.

C. Nor does the "comparative statistics" issue on review in *Wards Cove* pertain to this case. There, the Ninth Circuit relied on statistics showing that a disproportionate number of minorities held low-paying, unskilled jobs and a disproportionate number of whites held high-paying, skilled jobs for its holding that 16 different subjective criteria had a disparate impact on defendant's workforce. 827 F.2d at 444. The petition granted by this Court challenged that ruling for its failure to provide statistics keyed to any one employment practice, and for its reliance on statistics providing nothing more than a snapshot of the composition of defendant's workforce.

[4] A passage from the plurality opinion in *Watson* quoted by Local 201 makes clear that the evidentiary standards the opinion was describing were directed toward criteria which include subjective elements, not merely objective criteria:

> Especially in cases where an employer combines subjective criteria with the use of more rigid standardized rules or tests, the plaintiff is in our view responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities.

108 S. Ct. at 2788-89 (citation omitted), cited at Local Pet. 11. Yet, as Local 201 concedes in its Questions Presented, the criterion at issue here is an "objective selection device." Local Pet. (i).

In contrast, the court of appeals here did not base its decision on statistics relating only to the racial composition of the union's membership. Nor did it fail to identify the particular employment *practice* that caused the disparate impact. The court of appeals identified the specific employment practice causing racial discrimination as the requirement that experienced black rodmen complete the Apprenticeship Program or the Training Program before taking the journeyman exam. The court of appeals also held that the discriminatory effect of this requirement was proven by comparing the racial composition of experienced rodmen seeking to take the journeyman exam to the racial composition of experienced rodmen admitted to the union.[5]

Local 201's petition erroneously argues that the Apprenticeship Program and the Training Program are somehow analogous to the routes to non-cannery and cannery employment in *Wards Cove*. Local Pet. 13. But the court of appeals here did not premise its ruling of discrimination upon a comparison of the percentage of blacks in the Training Program versus that in the Apprenticeship

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[5] Local 201 contends (Local Pet. 7), as it did below, that plaintiffs' statistical case improperly included apprentices in the "experienced pool." The court of appeals gave the argument appropriate short shrift:

> This argument suffers from a fatal flaw. Defendants' analysis focuses on black *participation* in the Apprenticeship and Training programs, rather than black *completion* of the programs (i.e., achievement of union membership).

Pet. App. 30a (emphasis in original). Local 201 claims, moreover, that apprentices should be subtracted *both* from the pool of applicants *and* the union membership. On this supposition, it argues that there would be no disparate impact. Local Pet. 11-14. Even assuming *arguendo* that not counting the examined apprentices has merit, correct application of Local 201's argument would require subtraction of these apprentices from the applicant pool *only*. This is because of "the unmanipulable nature of the figure of *actual* new members . . . ." Pet. App. 29a (emphasis in original). Removing apprentices, whom petitioners concede were predominantly white (Local Pet. 7), from the experienced pool would result in a bias in plaintiffs' favor and increase even more the deviation between the black composition of the applicant pool and the black composition of the group given an opportunity to take the exam. Plaintiffs' statistical approach, on this and other elements of the analysis challenged by defendants, was a proper and "conservative methodology." Pet. App. 25a; *see* Pet. App. 29a-30a.

Program, or on the racial composition of union membership generally. To reiterate, it based its ruling on a comparison of the percentage of blacks in the group of experienced rodmen who sought to become union members to the percentage of blacks in the group who became union members.[6]

D. In a final effort to gain review by this Court, Local 201 contends that the proper allocation of proof when a defendant has produced evidence that the challenged employment practices are based on legitimate business reasons is at issue here. It urges that this aspect of its petition be considered in light of *Wards Cove*.

No review is warranted on this basis because Local 201 presented no argument or evidence below on either a "business necessity" or a "job relatedness" defense.[7] Rather, defendants' entire defense was directed at contesting plaintiffs' statistical case. No defendant claimed that the challenged classroom prerequisite to the journeyman exam was based on legitimate business reasons.

> The record is, indeed, devoid of *any* affirmative rebuttal case—that is, seeking to prove by their own evidence that admission to union ranks was not racially disproportionate. We therefore

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[6] Local 201 seems to make a separate argument that the court of appeals' ruling that no named plaintiff had standing to challenge the high school diploma requirement for admission to the Apprenticeship Program means that statistics relating to examinees who completed the Apprenticeship Program are not relevant. *See* Local Pet. 7. This argument is wrong. The absence of a named plaintiff with standing to challenge the high school diploma requirement does not mean that statistics relating to defendants' use of the Apprenticeship Program as a prerequisite to the journeyman exam should be ignored in the analysis. As the court of appeals observed, plaintiffs' claim "is not that the Training Program or the Apprenticeship Program (setting aside the high school diploma requirement) were themselves discriminatory; rather it is that the requirement that the rodmen complete such a program before being allowed to take the journeyman examination worked discriminatory effects." Pet. App. 63a. Therefore, the courts below properly approved of the inclusion of those apprentices who actually took the journeyman exam in the "experienced pool" analysis.

[7] The plurality in *Watson* recognized that defendants have at least the production burden in connection with a business justification or necessity defense. 108 S. Ct. at 2790. Moreover, *Wards Cove* concerns the allocation of the burden of proof relating to a business necessity defense of *subjective* hiring criteria, in contrast to the *standardized* classroom training prerequisite challenged in this case.

> conclude, in light of our earlier analysis, that plaintiffs' prima facie case went unrebutted.

Pet. App. 40a (emphasis in original); *see* Pet. App. 150a-151a (Conclusions of Law 16, 18, 19). Thus, the court below "did not, in terms, formulate a 'business justification' test," as Local 201 appears to contend it should have. Local Pet. 15. The court had no need to do so, because no defendant offered any evidence on that subject. In fact, this Court is the first forum in which any defendant has attempted to raise the issue.

Contrary to Local 201's petition, the court below did not acknowledge "that the Local's practice of requiring classroom training for journeymen did, in *Watson's* words, further 'legitimate business reasons.' " Local Pet. 15. The court of appeals' general statements that unions may limit their size and are not required to admit unqualified individuals (Pet. App. 36a, 40a) cannot be distorted to suggest that the court approved the precise practice it held to be unlawful—the requirement of classroom training, regardless of experience, as a condition to taking the journeyman exam. Indeed, because defendant unions, during the so-called Open Period in part of 1971, permitted rodmen to take the journeyman exam solely on the basis of their experience in the trade, the court of appeals concluded "that the Union itself has not viewed an educational requirement as an absolute, minimum objective qualification." Pet. App. 39a. Thus, there was no conceivable business justification for defendants' discriminatory practice. As the court of appeals held, "the Union has, in effect, hoisted itself on its own petard, having chosen in the Open Period to treat experience alone as sufficient for admission to the journeyman exam. . . . In our view, *the Open Period establishes that experience can qualify one to be a journeyman rodman. . . .*" Pet. App. 39a (emphasis in original).[8]

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[8] As a third issue for this Court to review, Local 201 raises the court of appeals' assessment of plaintiffs' proof of disparate treatment. Local Pet. 9, n.7. However, Local 201 offers no reason for the Court to review this issue, and there is none. The court of appeals applied the well-established principle that statistical disparities themselves, when great enough, establish the discriminatory motive element of a disparate treatment case. *See, e.g., Hazelwood School District* v. *United States*, 433 U.S. 299, 307-08 (1977); *International Brotherhood of*

II. The Court of Appeals Correctly Affirmed The District Court's Ruling That The International Violated Title VII And Section 1981.

The court of appeals had "little difficulty concluding that the International's involvement in the membership practices of Local 201 was sufficiently extensive to subject it to liability under Title VII and section 1981." Pet. App. 51a. The court of appeals endorsed the district court's findings that "the International actively participated in and approved of Local 201's membership procedures." Pet. App. 63a. Accordingly, the court of appeals, applying established common law agency principles, affirmed the district court's determination that the International was liable.

A. On its review of the record, the court of appeals concluded that there was "overwhelming evidence of the International's awareness of and participation in Local 201's membership practices." Pet. App. 64a. The evidence amply supported the findings of the district court that: (1) the International at all times endorsed the existence of classroom training prerequisites for membership; (2) the International exercised significant control over the Apprenticeship Program and Training Program; (3) the International knew about Local 201's membership practices, the discriminatory effect of those practices, the racial imbalance in Local 201, and claims of discrimination against Local 201; (4) on at least two occasions, the International prescribed the membership test Local 201 employed; (5) the International created the Open Period and expressly instructed Local 201 to implement it; and (6) the International endorsed the system that "placed unnecessary barriers between *experienced* black rodmen and Union membership." Pet. App. 12a (emphasis in original); *see* Pet. App. 61a-64a; Pet. App. 138a-143a (Trial Findings 128-139).

Teamsters v. *United States*, 431 U.S. 324, 338 (1977); *McKenzie* v. *Sawyer*, 684 F.2d 62, 71 (D.C. Cir.1982). *General Building Contractors* v. *Pennsylvania*, 458 U.S. 375 (1982), cited by Local 201, merely reiterates the proposition that intent must be proven in a section 1981 case; it does not take issue with the principle, based on this Court's decisions, that statistical evidence may be used to prove intent.

The International ignores the "overwhelming" evidence (Pet. App. 64a) against it, making the bewildering assertions that "there was no evidence that the International knew that a disparate impact was occurring at Local 201" (Int'l Pet. 4) and that "[t]here was simply no evidence whatsoever in this case which showed that the International Union authorized, condoned or ratified the challenged conduct." Int'l Pet. 11. Similarly, the International claims that all of its activities "were designed to *increase* minority participation in . . . Local 201" (Int'l Pet. 14, emphasis in original), despite the finding that the International intentionally discriminated against experienced black permit workers. Pet. App. 63a-64a.

The International's assertions that the lower courts erred in finding the facts and reviewing those factual determinations would not warrant review by this Court, even if there were some support for those assertions in the record. *See Goodman* v. *Lukens Steel Co.*, 482 U.S. __, 96 L. Ed. 2d 572, 584 (1987). Here, there is no support for the International's factual claims.

B. The ruling against the International raises no issue of law warranting review. The court of appeals applied the test for international union liability established by *Carbon Fuel Co.* v. *UMWA*, 444 U.S. 212, 216-18 (1979)—the standard advocated by the International itself. Int'l Pet. 9. Contrary to the implication of the International's petition, the court applied the *Carbon Fuel* test *without* relying upon the International's constitution to support the imposition of liability. Int'l Pet. 11; *see* Pet. App. 59a-61a. Instead, the court focused on the International's conduct with respect to the membership practices at issue and found the International liable.

The International makes the absurd claim that the court of appeals' opinion conflicts with national labor policy and "could mean the end of the Labor Movement as we know it." Int'l Pet. 12, 13. The opinion, however, is just another in a long line of cases holding international unions liable under Title VII and section 1981 for discriminatory conduct at the local level.[9] It does not conflict

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[9] *See, e.g., Howard* v. *International Molders & Allied Workers Union*, 779 F.2d 1546, 1548 (11th Cir.), *cert. denied*, 476 U.S. 1174 (1986); *Myers* v. *Gilman Paper Corp.*, 544 F.2d 837, 850-51 (5th Cir.), *modified on other grounds*, 556 F.2d 758, *cert. dismissed*, 434 U.S. 801 (1977); *Patterson* v. *American Tobacco*

with decisions of this Court or other courts of appeals. The International here did not merely attempt to mediate an isolated local dispute, as did the international union in *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 738-39 (1969). Nor did the International take every reasonable step to bring Local 201 into compliance with the law, as did the international union in *Terrell* v. *U.S. Pipe & Foundry*, 644 F.2d 1112 (5th Cir. 1981), *vacated on other grounds*, 456 U.S. 955 (1982). Rather, as the district court found, and the court of appeals affirmed, the International, over a period of several years, "actively participated in and approved of" the unlawful membership practices. Pet. App. 63a.[10]

Finally, upholding the International's liability in this case will not discourage other international unions from endeavoring to eliminate racial discrimination at the local union level. The court of appeals' decision will, if anything, deter international unions from creating, endorsing, or administering programs and policies that disproportionately discriminate against blacks seeking union membership. That result is entirely consistent with the purposes of Title VII and section 1981. *Cf. Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 417-18 (1975) ("It is the reasonably certain prospect of a backpay award that 'provide[s] a spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history,' " quoting *United States* v. *N.L. Industries*, 479 F.2d 354, 379 (8th Cir. 1973)).

Co., 535 F.2d 257, 270-71 (4th Cir.), *cert. denied*, 429 U.S. 920 (1976); *Sagers* v. *Yellow Freight System, Inc.*, 529 F.2d 721, 737-38 (5th Cir. 1976); *Kaplan* v. *IATSE*, 525 F.2d 1354, 1359-60 (9th Cir. 1975); *Wheeler* v. *American Home Products Corp.*, 19 FEP Cas. (BNA) 143, 146 (N.D. Ga. 1979); *Taylor* v. *Armco Steel Corp.*, 373 F. Supp. 885, 911-12 (S.D. Tex. 1973). *Cf. Goodman* v. *Lukens Steel Co.*, 96 L. Ed.2d at 584-87 (International and two local unions held liable under Title VII and section 1981).

[10] *Sinyard* v. *Foote & Davies Division of McCall Corp.*, 577 F.2d 943 (5th Cir. 1978), also does not conflict with the rulings below. In *Sinyard*, the court refused to impose Title VII liability on an international union that had no involvement with the operations of its local. *Sinyard*, like the decision below, was decided on its facts. In the instant case, the facts established liability.

CONCLUSION

The court of appeals' decision applies sound principles of law established by this Court to the factual determinations of the district court. Neither Local 201 nor the International has presented any issue warranting review by this Court. The petitions for certiorari should accordingly be denied.

Respectfully submitted,

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